

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zachary Herman	Team: Squad #12	CCRB Case #: 202007603	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/17/2020 8:54 PM	Location of Incident: 172 Madison Street	Precinct: 79	18 Mo. SOL 5/17/2022	EO SOL 5/17/2022	
Date/Time CV Reported Wed, 11/18/2020 8:47 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 11/18/2020 8:47 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Burnett	30205	932383	079 PCT
2. POM Mohamed Elhanafi	15082	955897	079 PCT
3. POM Anthony Bomparola	15054	955761	079 PCT
4. SGT Frederick Manney	04797	949938	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Frederick Manney	Abuse: Sergeant Frederick Manney stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Anthony Bomparola	Abuse: Police Officer Anthony Bomparola searched § 87(2)(b)	
C.SGT Frederick Manney	Abuse: Sergeant Frederick Manney searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Anthony Bomparola	Abuse: Police Officer Anthony Bomparola searched the vehicle in which § 87(2)(b) was an occupant.	
E.SGT Frederick Manney	Abuse: Sergeant Frederick Manney failed to provide § 87(2)(b) with a business card.	
F.POM Mohamed Elhanafi	Abuse: Police Officer Mohamed Elhanafi failed to provide § 87(2)(b) with a business card.	
G.POM Anthony Bomparola	Abuse: Police Officer Anthony Bomparola failed to provide § 87(2)(b) with a business card.	
H.POM Patrick Burnett	Abuse: Police Officer Patrick Burnett failed to provide § 87(2)(b) with a business card.	

### Case Summary

On November 18, 2020, § 87(2)(b) filed this complaint via the CCRB's online website.

On November 17, 2020, at 8:54 p.m., § 87(2)(b) and an unidentified male passenger sat in her vehicle in front of 172 Madison Street in Brooklyn. A vehicle occupied by Sgt. Frederick Manney, PO Anthony Bomparola, PO Patrick Burnett, and PO Mohamed Elhanafi of the 79<sup>th</sup> Precinct drove past where § 87(2)(b)'s vehicle was parked on Madison Street and Sgt. Manney stopped § 87(2)(b)'s vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g)). After § 87(2)(b) and the unidentified passenger exited the vehicle, PO Bomparola searched the unidentified passenger (**Allegation B: Abuse of Authority**, § 87(2)(g)). Sgt. Manney and PO Bomparola searched the vehicle (**Allegations C-D: Abuse of Authority**, § 87(2)(g)). When Sgt. Manney and PO Bomparola completed their search, and § 87(2)(b) and the unidentified passenger returned to § 87(2)(b)'s vehicle. Sgt. Manney, PO Bomparola, PO Burnett, and PO Elhanafi returned to their vehicle and left the scene without issuing any summonses, arresting anyone, or providing § 87(2)(b) or the unidentified passenger with a Right to Know Act business card (**Allegation E-H: Abuse of Authority**, § 87(2)(g)).

The investigation received BWC from Sgt. Manney, PO Bomparola, PO Burnett, and PO Elhanafi linked in Board Review 05 and summarized in Board Review 07-10.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Frederick Manney stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Sgt. Manney initiated a stop of a vehicle occupied by § 87(2)(b).

In her testimony to the CCRB (BR 01), § 87(2)(b) stated she sat in her vehicle that was parked in the vicinity of 172 Madison Street. The vehicle engine was off, and the windows to the vehicle were rolled up. § 87(2)(b) stated that there was a clip of smoked marijuana sitting on a coffee cup in her middle dashboard. She estimated she had smoked the marijuana at least one hour prior to the incident, and that subsequent to smoking the marijuana, she had sprayed air freshener inside her vehicle. § 87(2)(b) stated as a result of spraying air freshener, her vehicle did not smell like marijuana. § 87(2)(b) stated that there was a male who witnessed the incident, but that she did not wish to provide contact information for him because he did not wish to be involved.

Sgt. Manney testified that he rode in the front passenger seat of an unmarked police vehicle with his window rolled down. As he and his team drove eastbound on Madison Street, Sgt. Manney smelled a strong odor of marijuana. The odor intensified as the vehicle drove down the street, and as Sgt. Manney's vehicle drove past § 87(2)(b)'s vehicle, he observed smoke inside § 87(2)(b)'s vehicle. Madison Street is not well lit, but § 87(2)(b)'s vehicle had an LCD screen that was lit inside her vehicle, which illuminated the smoke. Upon observing the smoke, Sgt. Manney determined that he was going to stop § 87(2)(b) in her vehicle.

PO Elhanafi's testimony regarding the odor of marijuana and observation of smoke inside § 87(2)(b)'s vehicle was consistent with Sgt. Manney's testimony regarding the officers' observations prior to initiating the stop. PO Elhanafi did not recall which officer decided to initiate the stop (BR04).

PO Burnett's testimony regarding the stop was somewhat consistent with Sgt. Manney's. PO Burnett, who sat in the rear of the police vehicle, did not state if he observed smoke in the vehicle.

PO Burnett smelled the odor of burnt marijuana, and stated that vehicle, which had its driver's side window rolled down, was the only vehicle with occupants in the area where the odor of marijuana was present (BR02).

PO Bomparola testified he smelled the odor of marijuana emanating from § 87(2)(b)'s vehicle, but did not state that he observed smoke inside the vehicle. PO Bomparola did not testify to who he thought initiated the stop.

Body-worn camera footage from Sgt. Manney depicts the beginning of the stop. At 00m52s, Sgt. Manney raises his right hand in view of the camera. At 00m55s the vehicle stops. Sgt. Manney exits the vehicle and walks towards the driver's side of a parked SUV with its lights on. Sgt. Manney stands by the rolled down driver's side window and at 01m01s asks § 87(2)(b) if she is smoking marijuana. § 87(2)(b) states she was. At 01m10s Sgt. Manney states the smell is "coming down the block." Sgt. Manney then instructs § 87(2)(b) to turn off the vehicle (BR05, summarized BR07).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

In People v. De Bour, 40 N.Y.2d 210, the court found that in order to initiate a stop of a civilian on the street, an officer must at least have a reasonable suspicion that a crime is about to occur, is occurring, or has occurred regarding that civilian (BR14).

In People v. Chestnut, 43 A.D.2d 260, the court found that officers who conducted a stop and search of a vehicle and its occupants based on the odor of marijuana had probable cause to believe that the vehicle contained contraband and that the odor of marijuana provided a basis for this belief (BR13).

§ 87(2)(b), § 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Anthony Bomparola searched**

§ 87(2)(b)

**Allegation (C) Abuse of Authority: Sergeant Frederick Manney searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (D) Abuse of Authority: Police Officer Anthony Bomparola searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Sgt. Manney and PO Bomparola conducted a search of § 87(2)(b)'s vehicle. It is also undisputed that PO Bomparola conducted a search of the front passenger side occupant of the vehicle.

§ 87(2)(b) declined to identify the occupant of the front passenger side of her vehicle, and in her testimony did not even indicate that the unidentified male was a passenger in her vehicle.

BWC footage from Sgt. Manney and PO Bomparola shows that these officers conducted the search of § 87(2)(b)'s vehicle (BR04, summarized in BR07 and BR08). The unidentified passenger's contact or identifying information is not stated in BWC footage recovered by the investigation (BR05, summarized BR07-BR10).

BWC footage from PO Bomparola depicts his search of the individual in the front passenger seat. At 1m51s, PO Bomparola states, "You can step out, boss." He then opens the door to the vehicle. The unidentified passenger exits the vehicle. At 1m55s, PO Bomparola asks, "Got anything on you that could hurt me?" The unidentified passenger responds, "Nah." Between 2m00s and 2m35s, PO Bomparola appears to pat the exterior of the unidentified passenger's clothing. After this, PO Bomparola escorts the unidentified passenger to the rear of the vehicle. PO Bomparola directs the unidentified passenger to lean on the vehicle and face him, which the unidentified passenger does.

Sgt. Manney and PO Bomparola consistently testified that their primary basis for conducting the search of the vehicle was the odor of marijuana. PO Bomparola affirmed that he frisked the unidentified passenger.

Both Sgt. Manney and PO Bomparola testified that the primary basis of their search of the vehicle was the odor of marijuana. § 87(2)(g)

**Allegation (E) Abuse of Authority: Sergeant Frederick Manney failed to provide § 87(2)(b) with a business card.**

**Allegation (F) Abuse of Authority: Police Officer Mohamed Elhanafi failed to provide § 87(2)(b) with a business card.**

**Allegation (G) Abuse of Authority: Police Officer Anthony Bomparola failed to provide § 87(2)(b) with a business card.**

**Allegation (H) Abuse of Authority: Police Officer Patrick Burnett failed to provide § 87(2)(b) with a business card.**

It is undisputed that Sgt. Manney, PO Elhanafi, PO Bomparola, and PO Burnett did not provide business cards to § 87(2)(b).

Sgt. Manney testified to the CCRB that in the course of his interaction, he recognized § 87(2)(b) as § 87(2)(b) who had issued threats to police officers before, including PO Burnett. Sgt. Manney's understanding at the time of the incident was that the NYPD had taken § 87(2)(b)'s previous threats seriously, as an officer had relocated their home and the NYPD Intelligence Bureau was sending officers notifications regarding § 87(2)(b). Based on this knowledge, Sgt. Manney told officers under his command not to provide § 87(2)(b) with business cards, as he believed that providing § 87(2)(b) with information about police officers could place those officers at risk.

PO Burnett testified that he had a previous interaction with § 87(2)(b) and that § 87(2)(b) had issued threats against himself and his family. PO Burnett relocated his home as a result of threats issued by § 87(2)(b). Based on this previous association, PO Burnett did not want to provide § 87(2)(b) with additional information about himself, and did not provide a business card to § 87(2)(b).

on this basis.

PO Bomparola testified that neither the passenger nor § 87(2)(b) requested or were provided business cards. PO Bomparola's understanding of NYPD policy regarding the provision of business cards is it is only mandatory to provide a business card upon a civilian's request.

PO Elhanafi did not provide a business card to § 87(2)(b) he did not provide the CCRB with a basis for his failure to provide this document.

NYPD Patrol Guide Procedure 203-09, Section D, states that members of service are to offer business cards in all instances of non-custodial questions, stops, frisks, and in instances where members of service stop a vehicle. Section 4 of this procedure states, "Offer pre-printed Right to Know Business Card upon conclusion of law enforcement activities, except in cases when a summons is issued or an arrest is made, or exigent circumstances are present (i.e., physical resistance, flight, imminent danger of physical injury or damage to property, or other factors make such procedure impractical) (BR11).

The Patrol Guide does not list an exception for an officers' particularized assessment that a specific civilian poses an ongoing but non-immediate risk to officer safety. Additionally, business cards contain information that officers are required to provide upon civilian request, meaning, the officer's name and shield number, along with their precinct, rendering Sgt. Manney and PO

§ 87(2)(b), § 87(2)(g)

#### Civilian and Officer CCRB Histories

- § 87(2)(b)
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- PO Burnett has been a member-of-service for 17 years and has been a subject in seven CCRB complaints and 17 allegations, of which two were substantiated. § 87(2)(g)
  - 201805726 involved substantiated allegations of refusal to obtain medical treatment. The board recommended command discipline B and the NYPD imposed command discipline b.
- PO Elhanafi has been a member-of-service for seven years and has been a subject in 13 CCRB complaints and 41 allegations, none of which were substantiated.
  - § 87(2)(g) [REDACTED]
- PO Bomparola has been a member-of-service for seven years and has been a subject in 15 CCRB complaints and 51 allegations, of which nine were substantiated.
  - 201704022 involved substantiated allegations of a frisk, vehicle search, and vehicle stop. The Board recommended command discipline A and the NYPD imposed command discipline A.

- 201707955 involved a substantiated allegation of refusal to provide shield number. The Board recommended command instructions and the NYPD imposed command instructions.
- 201710310 involved substantiated allegations of a frisk and a vehicle search. The Board recommended command discipline B and the NYPD imposed command discipline B.
- 201902762 involved a substantiated allegation of failure to provide a RTKA card. The Board recommended command instructions and the NYPD imposed command instructions.
- 201907703 involved a substantiated allegation of failure to provide a RTKA card and refusal to provide shield number. The Board recommended command discipline A and the NYPD imposed command discipline A.
- PO Bomparola has been the subject of nine vehicle search allegations, of which two were substantiated.
- PO Bomparola has been the subject of three failure to provide RTKA card allegations, of which two were substantiated.
- Sgt. Manney has been a member-of-service for nine years and has been a subject in 12 CCRB complaints and 30 allegations, none of which were substantiated. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b)
- As of April 27, 2021, the NYC Office of the Comptroller has no record on a Notice of Claim being filed in regards to this complaint (BR15).

Squad No.: 12

Investigator: <u>Zachary Herman</u>	Investigator <u>Zachary Herman</u>	<u>04/22/2021</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Carlmais Johnson</u>	IM <u>Carlmais Johnson</u>	<u>May 5, 2021</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date